1950

File No. S.Bel. 5/50

Legal Department.

A Branch.

Subject :— Civil Suit No. 61 of 1948

PHEX Govind Gopal Deshpande.

Vs.

Province of Bombay.

For restoration of possession of plaint-lands and properties and other reliefs.

First Appeal No. 220 of 1950.

S. Bel. 5/50

S. Bel. 5/50.

C O N T E N T S.

Legal Department File No. S. Bel. 57/50.

Sr.No.	R.I./O.No.	Subject	Pages.
		Suits Belgaum.	
		C.S. No. 61/1948	
		G. G. Deshpande	
		V/s.	
		The Province of Bombay.	
		For restitution of possession of plaint lands and properties and other reliefs.	
		CONTINUED.	
		Legal Department File No.	1-62.
Sr.No.	R.I./O.No.	Subject	Pages.

సినియర్ సెక్షన్ లో ఇవ్వబోయే ప్రశ్నలు -

గోడలు గోడచిత్రాలు చూడండి వరుస క్రమ
క్షిణ- ప్రాక్టీస్. చక్కగా గీత
పాఠం ముగిసాక తాంగ్ సేవదత్తి

పాయింట్ 1.

ఇవ్వబోయే పాఠము కొరకు గా రాయవలసిన విషయం -

ఎ) పాఠ్యపుస్తకం చూడకుండా చెప్పగలిగే ప్రశ్నలు

అ) భాగం. సం. పేజీ. లభించే సమయం

I చూడండి. $\frac{272}{3}$ 8-17 14-3-0 14-0-9 కొలతలు

II చూడండి $\frac{34}{1}$ 7-30 8-8-0 "

III చూడండి. $\frac{35}{1}$ 3-30 1-6-0 "

ఆ) I అందరికీ 54 15-4 → 19-3-0 చేతలతో
II కొంచెం 419 28 → 33 → 50-0-0 $\frac{1}{4}$ సెం "
III చిక్కులు $\frac{24}{1}$ 8-18 11-3-0 చేతలతో
IV చిక్కుడు $\frac{174}{1}$ 2-16 5-15 చర్చ

ఇ) కొంచెం 4 9-30 20-0-0 $\frac{1}{4}$ సెం

బి) చూడండి లాంటి వాటిని ఏ లా చూడండి అని ఇవ్వాలో చూసి ఇండి. ఇవన్నీ ఇవ్వడానికి సిద్ధంగా ఉండాలి.
చిక్కులకి కొద్దిపాటి వివరణ ఇస్తే ఇవ్వగలరు

Suit No.61
1948.

The Senior Civil Judge, Belgaum.

1. Govind Gopal Deshpande of Murged
Age-35, Caste, Brahmin Occupation Agriculture. } -Plaintiff-

Vs.

1. Province of Bombay.

In this suit the contentions of the plaintiff are

(1) The property of the plaint.

	Village.	S.No.	Area.	Assett.	Nature.
(a)	Murged.	272/3	8-17	14-7-0 14-0-9	Kulkarniki.
	Halki	34/1	7-30	8-6-0	-do-
	Halki	35/1	3-30	1-6-0	-do-
(b)	Alad-Katti.	54	15-4	19-3-0	Deshpande.
	Hosur.	419-	28-33	50-0-0	" 1/4 share
	Chikop	174/1	2-16	5-15-0	Deshpande
	"	26/1	8-18	11-3-0	"
(c)	Hosur.	4	9-30	20-0-0	Rayatwari 1/4 share.

(d) A house at Murged on Deshpande lane, surroundings:-

East :- Govt.Road; West ; House of Shiddappa Teggimmani; North- House of Govind-Appaji; South:- another house of the plaintiff.

(2) The property mentioned in para (1) a,b,c,d, was originally held by Mr.Gopal Venkatesh Deshpande .Mr.Gopal Venkatesh Deshpande adopted the plaintiff by usual ceremone ie. Homa & Havan etc. on 18-1-1 41 . The said adoption deed was registered . Hence the plaintiff is the legal , adopted son by law and by that adoption he became a constituent of undivided family of the said Gopal Venkatesh.

(3) Mr.Gopal Venkatesh was prosecute' , in the year 1921, in a criminal case. The immoveable property of the accused , Mr.Gopal Venkatesh was attached under section 88 Cr.P.C. as the accused was absconding. The property

stands in the name of the Collector of Belgaum. The property still exists in the attached condition.

(4) Mr.Gopal Venkatesh Deshpande died on 28-1-1943 So the right of making wahiwat of the property shown in para (1) a,b,c,d, of the suit devolves on the plaintiff.

(5) There was only the life interest of Mr.Gopal Venkatesh in the property mentioned at para (1) a &b of the plaint and after his death the said attachment is null and void. The plaintiff is the full owner of the said property. The property at para (1)c being still under attachment., the plaintiff is the owner since the death of Mr. Gopal Venkatesh. There was only the life interest of Mr.Gopal Venkatesh in the property at para (1) d of the plaint, being watan property. After his death the plaintiff became the owner of the said property. If it is proved to be not watan property and it being under attachment the plaintiff became the owner of that property on the death of Gopal Venkatesh.

As the said Gopal Venkatesh died, the prupose of attachment was vanished and the attachment became null and void.

After the death of the said Gopal Venkatesh, the Collector of Belgaum has no right to make wahivat of the said property of the plaint.

The plaintiff had applied to Government for the restoration of the said property. But the Government refused to restore the property to the plaintiff. Hence this suit is brought to put the said property into the possession of the plaintiff after cancelling the order, putting the said property into the possession of the Collector of Belgaum.

(6) Cause for this plaint:- The death of Mr.Gopal Vanketesh on 28-1-1943 and for yearly income at the end of the years 1946, 1947,& 1948.

(7) Court fee charges will be:- The assessment of all S.Nos.-72-14-0 X7½ = Rs.584-1-0 . The watan profits of watan property ,being 0-2-3- Nafa will be Rs.2-1-9. The total income will be Rs.586-2-9 and the yearly income for 3 years will comes to Rs. 1400/-. The total amount will be Rs. 2086 -2-9.

(8) The court is being empowered to deal with this suit as the value of the property of the plaint.- will comes to Rs.8000/- . The plaintiff, the defendant and the property of the plaint, being in the jurisdiction of the court, the court is competent to decide the suit.

(9) A notice was given on 20-6-1947 to the Government about this suit, being against the Govt. as required by section 80 C.P.C.

(10). The contentions of the plaintiff are:-

(a) The property of the plaint should be ordered to be put into the possession of the plaintiff ,as the legal owner of the same, rejecting all the objections of the defendant.

(b) The yearly income for 3 years should be ordered to be given .

(c) The yearly income till the possession of the property is obtained should be ordered to be given.

(d) The court fees of the plaint should be ordered to be given.

(e) Any other item to be given to the plaintiff by the defendant, as the court deems fit.

(f) Permission to change the original plaint if required.

(ii) In these circumstances the decree of the above - property should be passed in favour of the plaintiff. The extracts from V.F.VII & XII and VI are enclosed along with the pla

the plaint. The original adoption deed is produced in Revenue Office. It is not yet traced. It will be produced in due course.

Sd/-xx

P. 41 Below Collector of Belgaum's letter No. L.A.w.-689, dated 6-12-1948.

No. L.S.T.

Camp; Bagalkot, 19-12-1948.

Submitted.

P.1to 3 2. This is a suit filed by Mr. Govind Gopal Desnpande of Murgod, taluka Saundatti for restoration of S.No. 272/3 of Murgod etc., mentioned in the plaint and cost of the suit together with the income of the lands for 3 years and future mesne profits.

L. D. 27 DEC 1948 A

3. The facts of the case in brief, are as under

Mr. Gopal Venkatesh Deshpande of Murgod, the plaintiff's adoptive father misappropriated the funds of the Murgod Co-operative Credit Society and absconded in 1921. Prosecution was then launched against him for offences under sections 409 and 114 I.P.C. As he did not appear before the court, action under sections 87 and 88 Cr.P.C. was taken and his property consisting of a house at Murgod and watan and khalsa lands at Halki and other places was attached. The accused applied for restoration of the attached property in 1926, but his request was refused by the Sub-divisional Magistrate, P.C., the District Magistrate and finally by the High Court. He then filed a civil suit which was also dismissed on 23-9-1931.

17332 27-12-48 A

The Collector under his No. L.Alien 150 of 7-11-1940 ordered that the Khalsa land and the house which belonged to the accused should be disposed of. (P. 2 File II). As there was no demand, the property is still lying undisposed of. As regards watan property the Commissioner was of the view that the watan property belonging to the accused would not lose its watan character by its attachment and ordered in his No. N.N. 1146 of 30-5-1941 that the leasing of the watan lands annually should be continued until the death of Mr. G.V.Desnapande unless in the meantime the lands were sold by him to one of the watandars of the

the same watan. The attached lands are being leased annually and the amount realised credited to Government.

Gopal Venkatesh died on 18-1-1941. After his death the plaintiff applied to the Commissioner for restoration of the forfeited lands. His request was refused by the Commissioner under his No. W.T.N. 1146 of 17-1-1945. He then also approached Government with the same request. Government also turned down his request under G.L.R.D.No. 10634/39 of 4-8-1946.

Being dissatisfied with these orders, the plaintiff has now filed this suit.

The attached property including the watan and khalsa lands and the house of the deceased Mr. G.V.Deshpande, was at the disposal of Government under section 88(7) Cr.P.C. The effect of the order was to forfeit Mr. Gopal's whole interest in the watan lands and to put an end to any title which Gopal Venkatesh might have had with regard to those lands and to these lands empower Government either to regrant or to dispose of them in any way they liked. Consequently the lands on forfeiture ceased to be of watan character and the plaintiff - Govind can have no valid claim to the forfeited watan lands of Gopal Venkatesh as opined by the R.L.A. (Vide R.L.A's memo No. 8910 of 18-12-1944).

The orders of forfeiture under sec. 88(7) Cr.P.C. passed by the Sub-Divisional Magistrate and supported by the District Magistrate and the High Court and refusal to restore the lands to the plaintiff are correct.

The Commissioner, therefore, considers

that

that the suit brought by the plaintiffs may be defended. Sanction may, therefore, please be accorded to defend the suit.

The case papers accompany.

O.C. signed by Commr. , for Commissioner, S.D.

Remembrancer of Legal Affairs.

17

19 57

Belgaum C.S.No.61/1948.

This is a suit in which the plaintiff claims restoration of certain properties. The properties belonged originally to his adoptive father who was prosecuted for offences under sections 409 and 114 of the Indian Penal Code for ~~the~~ misappropriation of funds of a Co-operative Society. As he failed to appear ~~xx~~ before the Court, his properties were attached under section 88 of the Criminal Procedure Code and disposed of. The plaintiff has filed this suit for restoration of those properties after the death of his father. The plaintiff's case is untenable. A succeeding watandar claims only through his predecessor as his heir and the effect of action under sec.88(7) of the Criminal Procedure Code was to put an end to any title which the plaintiff's father had with regard to the plaint lands. The plaintiff has therefore no valid claim. The defence of the suit may be sanctioned on the lines of the accompanying brief.

R.M.
3/2/49

~~R.C.A~~ C.R. As further amended the Brief may be approved

R.C. 22/2

R.L.A. C.R. 22/2 and will please add some necessary words at the place where I have put the question mark.

...ATE ...PARTMENT

7.3.49 Mr. ...

R.L.A. C.R. 22/2 11.3.49 I regret the omission. I have added the missing ...

Sec'y to Govt. ... R.C. 23/3

2231

2-1949

O. S. No. 61 of 1948.

21. 1-57

In the Court of the Civil Judge, Sr. Dn.,
At Belgaum.

1. Govind Gopal Deshpande of Murgod. ... Plaintiff.

Vs.

1. Province of Bombay. ... Defendant.

Claim Rs.

Herein the written statement of the defendant is as follows :-

1. Defendant does not admit the factum and the legality of the plaintiff's alleged adoption by Gopal Venkatesh. Plaintiff should be put to strict proof thereof.

2. Gopal Venkatesh had applied in 1925 for restoration of the attached properties in suit, to Sub Divisional Magistrate, - District Magistrate and also to the High Court but his request was not granted. The said Gopal also filed a Civil Suit for restoration of the said properties and it was dismissed on -- 23-9-1931. It is denied that on the death of Gopal Venkatesh, plaintiff became the full owner of the plaint properties and that in the Watan lands, his adoptive father had only a life interest. The effect of the order under Section 88(7) of the Cr. Pro. Code was to forfeit Gopal's whole interest in the Watan lands and not merely, his life interest in the said lands. No interest was, therefore, to vest in the plaintiff, on the death of his adoptive father in regard to the Watan lands.

3. The contention of the plaintiff that he has become the full owner of the plaint properties and that they vest in him after the death of deceased Gopal are not correct. The Khalsa and Watan lands and other properties mentioned in the plaint, -- belonging to Gopal Venkatesh were at the disposal of the Govt., under Section 88(7) of Cril. Pro. Code, the effect of which was to put an end to any right, title or interest which Gopal -- Venkatesh might have had with regard to the said properties and to empower Government either to regarnt or dispose of them in any way they liked. The effect of the order under Section --

23

88(7) of Cril. Pro. Code, was to forfeit Gopal's whole interest in the Watan lands involving the extinction of the Watan Tenure of the lands. Consequently plaintiff has no valid claim even to the watan lands of Gopal Venkatesh.

4. Plaintiff has no cause of action against the defendant as regards the watan lands and other properties mentioned in the plaint. The plaintiff has no interest, whatever, left in the suit properties, as a result of the action taken by Govt.under the Cril. Pro. Code.

5. The suit being based on a misconception of the legal -- position, it should be dismissed with costs.

District Government Pleader,
Belgaum.

I, B. V. Jakati, Esqr., District Government Pleader, - Belgaum, do hereby declare that what is stated in paragraphs 1 to 5 above is true according to the information received and believed to be true. This verification is made at Belgaum, on the day of 1949.

District Government Pleader,
Belgaum.

Reg. O.S.No.61/48.
Ex.35.

I S S U E S

1. Whether the plff proves the factum of his adoption as alleged & its validity?.

2. Whether the whole interest of plff's adoptive father including his vatan rights in all suit property were forefeirted? falling by the proceedings under section 88(7) of Cr. Pr. Code started by Govt. against plff's adoptive father?

3. Whether plff proves that he became owner of all suit properties after the death of his adoptive father?

4. So what arears of ~~mesne~~ profits, is pff entitled?

5. What orders regarding declaration & possession as claimed by plf.?.

No more sought.

S/D
1-8-1949. Civil Judge. S. Dn,Bgm.

27 83

Received on 26-7-1948.
Registered on 27-7-1948
Decided on 16-11-1949.
Duration 1 - 3 - 20-

JUDGEMENT.

IN THE COURT OF THE CIVIL JUDGE S.D. BELGAUM.

CIVIL SUIT NO. 61 of 1948.

Ex.51.

Messrs. P.A. & A.G.Kulakarni. Pls.

1. Govind Gopal Deshapande, age 35, Brahmin, Occ. Agri. of Muragod Taluka Soundatti. — plff.

against.

Mr.B.V.Jakati. Pl.

1. Province of Bombay by its represenatative Collector of Belgaum. — Deft.

Claim Rs. 2086-2-9 for Court fee and Rs.8000-0-0 for jurisdiction.

Teh plff sues:-

Teh plff sues for declaration that he is the owner of the suit property, Rs. 1400/- as past mense profits and costs from defts alleging that the properties described in para 1 clauses A to D belonged to deceased Gopal, that deceased Gopal took plff in adoption on 18-1-1941 in Damashayan form, that by virtue of his adoption, plff became entitled to suit properties, that in 1921, crimiaal case was lamnched by Govt. against Gopal and his property was attached under sec.88 of Cr. P.C. that the Govt. is in possee--ssion of the attached property as yet, that deceased Gopal died on 28-1-1943, that after his death plff has become theowner of the suit properties and is entitled toits possession that the properti--ies described in para 1 clause A and B are Watan property, that after the death of the Gopal., he is entitled to their possession that the property described in para 1 C is a non.watan property - that as it is in the attached state, he is entitled to possession after the death of Gopal, that in case property described in para 1 d is held to be of non-watan character, he is entitled to it as it is in the attached state as yet, that the deft h s no right to continue in possession, that the cause of action arose on - 28-1-1943.

Deft contends by W.S.(ex.30) that the adoption and its legality are not admitted, that Gopal had applied in 1925 for the restoration of the attached property in suit No. to the Sub Divisional Magistrate, District Magistrate and also the High Court but his request was not granted, that deceased Gopal had also filed a Civil suit for the restoration of the properties but it was dismissed on 23-9-1931, that it is not admitted that Gopal had only life xx interest in suit properties, that by virtue of the order under s. 88 clause 7 Cr. P.C. Goapal's whole interest in the Watan lands was extinguished that even the interest of Gopal in the Khalsa property was extinguished under s. 88 clause 7 of Cr. Pr. Code, that plff cannot claim any interest in the suit properties after the death of Gopal, that the suit should be dismissed with costs.

The issues for trial as per Ex.35 are :-

1. Whether plff proves the factum of adoption as alleged and its validity?
2. Whether the whole interests of plff's adoptive father including his watan rights in all suit properties were forfeited fully by the proceedings under s. 88(7) of Cr. Pr. Code started by Government against plff's adoptive father?
3. Whether plff proves that he became owner of all the suit properties after the death of his adoptive father?
4. To what arrears of mense profits, is plff entitled?
5. What orders regarding declaration and possession as claimed by plff?

My findings are:-

1:- Yes.

2:- No.

3:- Yes.

4:- Rs.1350/-

5:. As per order.

29

Reasons.

1. Properties described in para 1 Clauses A and B are Watan properties. Property described in para 1 clause C is a Rayata -wa land. The property described in para 1 clause D is a house situate at Muragod. These properties belonged one Goapl who was the uncle of the present plff, in 1921, a criminal case was filed by Govt.-Deft and the suit properties were attached under sections 87 and 88 of Cr. Pr. Code as Goapl was found absconding. Goppl latter on appeared on before the Criminal Court and was convicted. Goppl died on 28-1-1943 vide Death Extract (Ex.44). Goppl took plff in adoption on 18-1-1941. The case of plff is that Gopal owned only life interest in respect of the watan properties described in para 1 claues A,B and D AND THE PROPERTIES ARE STILL under attachment by Government and that therefore on the death of Gopal, he is entitled to their possession as owner. As regards the non-watan property, plff's case is that as it is still under attachment, he is entitled to its possession after the death of Gopal on the strength of his heirship.

2. The defence of the deft is that Gopal did not own any life interest i n suit properties, that under section 88 clause 7 of C.P.C. Gopal's whole interest in the watan and non-watan properties were forfeited by Govt. and that as a result of forfieture, Gopal's whole interest in the properties was extinguished, that plff cannot claim any interest in suit properties. The deft denies the factum and legality of plff's adoption.

3. Issue No.1 :- plff was examined at ex.45. Gopal was his paternal uncle. Teh adoption took place on 18-1-1941 in the house of plff and the ceremony lasted from 9 A.M. to 11 A.M. About 30 people including families had collected to witnes the adoption ceremony in the house of plff. Jitmbhat and Vishnubhat officiated as parties and commenced the performance of the Homa in the presence of Gopal Plff(ex.45) and his natural mother Bhimabai (ex.46) and other

and other invitees. After the Homa commenced Gopal demanded plff in adoption from Bhimabai. Bhimabai asked Gopal if plff could not perpetuate both lines. Gopal said that the adoption in the Dwabu hsayan form can perputuate both lines. Bhimabai then consented to gave plff in adoption to Gopal. Plff (ex.45) was major at that time and he too comsented to the adoption. - Bhimabai then offered plff to Gopal. Gopal accepted plff and made him sit by his right side and put suger in his mouht. By this time thehoma was over. Pansupari was distributed to the assebled. Gopal then wrote the adoption deed there and then the at esting witnesses attested it there and then. The adoption deed apears at ex. 49. It was also registered. Bhimabai ex.46, - Jitambhat the of iciating priest (ex.47) and Shamaji ex.48, the officaiting Kulakarni of Muragod bear out all the facts that were narrated by plff to complete the - factum of his adoption. The deponent ex.48 has attented the a option deed and proves thesigniture of Gopal on the deed. Jitambhat (ex.47) recognises the hand-writing of Gopal and his signiture appearing on thedeed (ex.49). The Government did not lead any evidence by way of - rebuttal. I am, therefore, bound to believe plff and his witnesses on tis point. It only during the course of the arguments, the learned Govt.pleader took a stand that as Gopal died of plague, he was not in sound state of mind at the time of the adoption. Gopal was - personally written the adoption deed(ex.49) and survived the adoption for two years, I do not, therefore, think that Gopal was in an unonscious state at the time of adoption. Besides the deft did not take such a stand in the written statement. My conclusion therefore, is that plff proves the factum of his adoption andits legality. My finding on the first issue is accordingly.

4. -Issues 2 and 3 :- It is an admitted fact that the suit properties were attached by Govt. in 1921 and since that time, they are in the possession of Government. The lands are shown in the name of Collector in village record and the name of Gopal is shown in the column of otherrights vide exs. 5 to 22. If the allegations in the writtne statement of deft are correct, it appears that deceased Gopal made attempts to get them restored but ultimately failed in those attempts. It is argued by the learned Government Pleader that by virtue of the~~xxxxxx~~x the orders passed by Government under S. 88 (7) of Cr. P.C. the whole interest of Government in the watan and non.watan properties were forfieted by Government and that the effect of such forfie-ture is to put an endto the whole title of Gopal in them and clothe the Govt. with full ownership over them with the result of the Government is quite competent now either to keep it at their disposal or to regrant it to any body. In suport of this view point, he has quoted Dattaji vs. Narayanrao, 25 B.D.R. In the above case, the Government confscated the watan property of the absconding accused as he failed to aprear as per s. 89 of Cr. P. Code and regranted it to a relative of the absconding accused. It was held by their Lordship that the effect of the orderof confiscation is to put an end to abconding watandar's title

228

5. Persuing above view point further, the learned pleader of deft, hints further that plff who must be deemed to claim through Gopal, is debar-ed from claiming a lost property. In support of this principle, he has cited Radhabai vs. Anantrao, 9 B. 198, Tama vs. Shmarao 7 B.L.R. 135, Padappa vs. Swamirao, ~~xx~~24 B.L.R.556 (PC), Tuka vs. Gan 32 B.L.R. 1398. Swamirao vs. Bhimabai 34 B.L.R. The sum and substance of all the above rulings is that the succeeding watandar his title as an heir of the preceding watandar and adverse possession once started as against the deceased Watandar extinguishes the title of the preceding watanadar

under article of 144 of Limitation Act and thereb bars the remedy of succedding watanadar, so for the principle laid down in these authorities go, we cannot dispute their corrections. But if we scan theevidence of the parties on record, we would be convinced that the principles that emerage out of the quoted authoritaas of Defendant. have no bearing upon our present case, The learned Govt.Pleader has advanced his view points on the assumption that the Govt had confiscated these properties under s.88(7) of Cr. P.C. and by virtue of that confascation, had kept them at their disposal.' If the Govt. would have really taken that course in the respect of these properties, pl would have been copletedly non suited in this case. But the record shows that the Govt. did not go further than issuing a proclamation under s. 87 and attaching the properties under s. 88(2). The Govt. did not forfieted the properties under s. 88(7) of Cr. P. Cod but simply held them under their custody. The collector tried to show them as Govt. waste lands but the Commisssioner set aside the order of the Colletor and directed him to show it in his name as an Inam property vide ex.43. The order pf the Commissioner runs thus:-
" The watan property belonging to the accused does not loose its watan charactoer by its attachment. The sale of it will therefore have to be made within the family" As per this order, the village officers mutated the entry with this endo--rsment that as Gopal abconded, his life interest was only attached and therefore it sholud be shown under Inam Head in the name of the Collector vide ex.13. exs. 43 and 13, if read to-gether, make it crystal clear that the Govt. simply attached life interest of deceased Gopal and did not - ~~xxxxx~~ forfiet or confiscate it under s. 88(7) of Cr. P.C There are not meterials proceedings from Govt. to show - that the properties were ever confiscated or forfieted by them. The burden lies heavily upon the Government to - establish that confiscation but I think they ~~are under~~ ~~xxxxxxx~~ have totally failed to do so. As exs. 43 and 13 shew that the position of the properties is clearly this that they are

4 RE 33 67

under attachment still and that they only the life interest of the deceased Gopal was attached. In view of this clear cut position, it is futile on the part of the learned pleader to assert before me that the whole title of Gopal was extinguished by Govt. actions. If the forfieture or sale orde has not been passed by Govt, they can't do so now for setting the matter right vide Ram Kishore Seni petitioner -19 C.W.R.1 In the above case, it was held that an order of forfieture cannot be passed by Govt. after once the accused appeared before the Court. It is admitted fact that Gopal had appeared before the Cr. Court and also was convicted. So after the purpose of S. 87 and 88(2) of Cr. P.C. was served, I donot think that Govt. can usurp the properties and hold them at their disposal ad infinitem. It is ruled in Alagammal Vs. Sadashiv 1930 M.1017 that the effect of s. 88(2) of Cr. P.C. is to create interest in the property under attachement and to entitle to Govt. to be in the possition simply and that Government holds the possession in the capacity of a receiver appointed by a Civil Court. It is also observed in Bindeswari Vs. Lal mungari, A.I.R. 1937 Patna 642 that Govt. can't acquire any title over the property by means of a simple attachment order. In the above case, the accused had mortgage the property before the attachment by Govt. and it was held that by means of a simple attachment order, the Govt. were enttiled to the ecquity of redumption and not full title over the attached property. The last case which is on all its fours with the present case is reported in Secretary of State Vs. Ahalyabai Narayan . A.I.R. 1938 B. 321. The facts of that case are breifly these:- Dhondo and Gopal were two joint brothers. Dhondo died in 1918 leaving behind his widow and one daughter. Gopal by rights of survivorship became entitle to the family estate. Gopal was implicated in criminal case and had absconded. The Govt attached his estate under s. 88(2) of Cr. P. C. but did not sell it under s. 88 (7) Cr.P.C. Dondo's widow and daughter obtained a maintainac decree and proceeded against the attached property. Similar

Similar contentions were raised by the other side and it was held. " So long as the property has not been sold by Government or otherwise disposed of and so long as Govt. is continued to remain in possession of the attached property, it would be open to any party claiming an interest in it to obtaina decree of a civil court declaring his right in the property" and that decree will be binding upon Government. In view of the attached state of these properties and so long the Govt had no confiscated or disposed them of the plff who by virtue of his adoption to Gopal can claim his estate is competent in my opinion to seek their possession in as much as Gopalis interest in them was never extinguished. The above reasoning would apply to the watan as well as non-watan properties involed in the suit. My conclusion is, therefore, that plff by virtue of his title in non-watan a nd watan prpperties, arising out of his adoption to Gopal, is entitledd to seek their possession.

6. The case of watan properties stands on a better footing. It is evident from ex. 13 that only the life interest of deceased Gopal was attached. As per s.5 of watan Act, that attachemnt cannot survive after the death of Gopal. After the death of Gopal, the watan property reverts back to plff by virue of an implied regrant from Govt. vide Hanama trao vs. Bhavanrao, 10 B.H.C. 299. My findings on issues 2 and 3 are accirdingly.

7. Issues 4 and 5 : - plff claims past mense profits of Rs. 1400/- for three years. Plff ex. 45 states that the income of suit properties is Rs. 450/- per year. The Govt. did not lead any oral evidence by way of rebyttal. I am thereofre obliged to believe plff and to hold that he is entitled to arrears of mense profits at Rs. 450/- per year. Plff,is therefore, entitled to Rs. 1350/-.

8. Plff is entitled to the declaration and possession as sought. He is entitled to full costs as he succeeds. My findings on issues 4 and 5 are accordingly.

2 87 35 94

ORDER.

(1) Plaintiff do recover possession of suit properties, Rs. 1350/- as arrears of mense profits and costs of this suit from deft. Left to bear their costs.

(2) An inquiry into futhre mense profits be held under S. 20.R. 12(c) of C. P. C.

sd. Ranasubhe.
Civil Judge, S. Dn. Belgaum.
16-11-1949.

Suits :

Belgaum.

For restoration of possession of plaint lands and properties and other reliefs.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 4485.

Bombay Castle, 23rd April 1949.

Letter from the Collector of Belgaum, No. L.A.W. 689, dated the 6th December 1948—Forwarding papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BELGAUM.

Civil Suit No. 61 of 1948.

Govind Gopal Deshpande ... ... Plaintiff ;

versus

Province of Bombay ... ... Defendant.

Endorsement by the Commissioner, Southern Division, No. L.S.T., dated the 19th December 1948—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, No. 2403, dated the 1st March 1949—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

Original

G. R., No. 4485, L. D., dated 23rd April 1949.

To

*The Revenue Department,
*The Home Department,
*The Commissioner, Southern Division,
*The Collector of Belgaum,
The District Government Pleader, Belgaum (with two copies of the brief).

*With a copy of the brief.

No. of 1949.

Issued
31/1/50

Copy forwarded for information and guidance to

39 113
3 109

BELGAUM CIVIL SUIT No. 61 OF 1948.

Chronological Statement of Facts.

The suit is filed by Mr. Govind Gopal Deshpande of Murgod, taluka Saundatti, for restoration of possession of plaint lands and properties and costs of the suit, together with the income of the lands for three years and future mesne profits.

2. The plaintiff's adoptive father Gopal Venkatesh Deshpande had misappropriated the funds of the Murgod Co-operative Credit Society and had absconded in 1921. A prosecution was launched against him for offences under sections 409 and 114 of the Indian Penal Code. As he failed to appear before the Court, action under sections 87 and 88 of the Criminal Procedure Code was taken and his property consisting of a house at Murgod and *watan* and *khalsa* lands at Halki and other places were attached. The accused applied for restoration of the attached property in 1925 but his request was refused by the Sub-Divisional Magistrate, First Class, the District Magistrate and finally by the High Court. He then filed a civil suit which was also dismissed on 23rd September 1931.

3. On 7th November 1940, the Collector passed an order that the *khalsa* land and the house belonging to the accused should be disposed of. As there was no demand, the property is still lying undisposed of. As regards *watan* lands, the Commissioner ordered on 30th May 1941 that they should be leased annually until the death of Gopal Venkatesh Deshpande unless, in the meantime, the lands were sold to one of the Watandars of the same *watan*. The attached lands are being leased annually and the amount realised is credited to Government.

4. Gopal Venkatesh died on 18th January 1941. After his death, plaintiff applied to the Commissioner for restoration of the forfeited land. His request was refused by the Commissioner on 17th January 1945 and finally by Government on 4th March 1946.

5. On 20th June 1947, the plaintiff gave notice of suit under section 80 of the Civil Procedure Code and on 22nd July 1948, he filed the suit in the Court of the Civil Judge, Senior Division, Belgaum.

Grounds of Defence.

The plaintiff contends that after the death of his adoptive father he has become the full owner of the plaint properties, that in the *watan* lands his adoptive father had only a life interest and that they therefore vest in him after his death and that after the death of Gopal Venkatesh Government has no right to make *vahiwat* of the said properties. The plaintiff's contentions are not correct. The *khalsa* and *watan* lands and other properties of Gopal Venkatesh were at the disposal of Government under section 88 (7) of the Criminal Procedure Code the effect of which was to put an end to any title which Gopal Venkatesh might have had with regard to those lands and to empower Government either to regrant or to dispose of them in any way they liked (*see* Dattaji *v.* Narayanrao, 25 Bom.L.R., 228). Every succeeding Watandar claims through his predecessor as his heir (*see* 9 Bom. 198; 24 Bom. 506; 7 Bom.L.R., 135; 32 Bom.L.R., 1398 and 34 Bom.L.R., 967). The plaintiff as the adoptive son of Gopal can therefore claim through Gopal Venkatesh but the effect of the order under

section 88 (*7*) of the Criminal Procedure Code was to forfeit Gopal's whole interest in the *watan* lands involving the extinction of the *watan* tenure of the lands (*see* Bhima *v.* Raghavendracharya, 24 Bom. 482). Consequently, the plaintiff has no valid claim even to the *watan* lands of Gopal Venkatesh.

2. The plaintiff may rely on the entries in the Record of Rights. It is true that the name of Gopal Venkatesh was entered in the column relating to miscellaneous rights which might show his life interest only was attached. These entries were made on the strength of the order of the Commissioner according to whom the life interest of an absconder in the *watan* property should only be at the disposal of Government. The view of the Commissioner was considered by Government to be incorrect and the correction of the entries was, it is presumed, ordered by Government (*see* Remembrancer of Legal Affairs' opinion No. 8910, dated 18th December 1944). The District Government Pleader should obtain extracts of the Record of Rights and produce them in the Court, if necessary.

3. The plaintiff's adoption, both factum and its legality, should be challenged and he should be put to strict proof thereof.

4. It should, therefore, be contended that the suit fails and must be dismissed with costs.

HH 41 47

Very Urgent.

No. J.72 of 1950.
Belgaum, 6th February 1950.

5

To

The Remembrancer of Legal Affairs,
Bombay.

Subject:- Civil Suit No.61 of 1948 on the file of the Civil Judge, Belgaum. For filing an appeal against the order of the lower Court.

Sir,

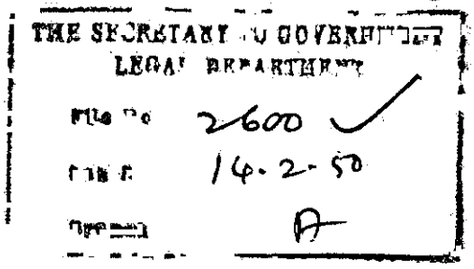
I am herewith sending the certified copy of the Judgment and the certified copy of the decree in Reg.O.S. No.61 of 1948 (of the Court of the Civil Judge, S.Dn., Belgaum) for filing an appeal against the order of lower Court Judgment.

Yours Faithfully,

Sd/-....

District Government Pleader, Belgaum.

Forwarded with compliments through the Collector of Belgaum.



No. L.A.W.689.

Belgaum, 9th February 1950.

Forwarded W.Cs to the Remembrancer of Legal Affairs, Bombay in continuation of this office letter No. L.A.W.689, dated 5-12-1949.

For Collector of Belgaum.

L-8/2.

Legal Deptt.

Subd. with pp.

2. Please see orders at p. 97 ante. From the certified copy of the judgment (placed below) it appears that the appeal will lie to the High Court. The papers may, therefore, be forwarded to the G.P. H.C. for necessary further action.

For institution of the appeal
D.K. 21/2

29.2
21/2

A.L.R. How G may consider whether the papers should not be put up to R&A for sanction

As proposed by the D.S.P. Belgaum in his letter at p 93 ante. sanction may be accorded to the institution of an appeal in the H.C. court & Sp. PP may be instructed accordingly.

RM
25/2/50

RLA
25/2

A

Suits:
Belgaum.
For restoration of possession of plaint lands and properties and other reliefs.

43 / 1+5

GOVERNMENT OF BOMBAY
Legal Department,
Resolution No. 3483
Bombay Castle 13th March 1950.

Read Government Resolution Legal Department No.4485 dated 23rd April 1949.

Letter from the District Government Pleader, Belgaum O.S.No. 61 dated 23rd November 1949 forwarding copy of judgment and stating that the suit noted in the margin was decided by the Civil Judge, Senior Division, Belgaum on 18th November 1949, when the following order was passed :-

In the Court of the Civil Judge (Senior Division), Belgaum.
Civil Suit No. 61 of 1948.
Govind Gopal Deshpande ... ... Plaintiff
Versus
Province of Bombay . ... Defendant.

" Plaintiff do recover possession of suit properties, Rs. 1350/- as arrears of mense profits and costs of this suit from defendant. Defendant do bear their costs. An inquiry into future mesne profits be held under section 20 R 12(c) of Civil Procedure Code."

Letter from the District Government Pleader ,Belgaum, No. 269 dated 28th November 1949 recommending appeal against the judgment of the Civil Judge, Senior Division, Belgaum dated 18th November 1949 in the suit noted in the margin.

Letter from the Collector of Belgaum No. L.A.W.689 dated 5th December 1949 agreeing with the recommendation of the District Government Pleader, Belgaum that an appeal should be preferred.

Endorsement from the Collector of Belgaum No.L.A.W.689 dated 9th February 1950 forwarding certified copies of judgment and decree in the suit noted in the margin.

Letter to the Government Pleader, High Court, Bombay No. 2758 dated 25th February 1950.

Resolution :- Sanction is accorded to the institution of an appeal in the High Court, Bombay against the judgment of the Civil Judge, Senior Division, Belgaum dated 18th November 1949 in the Civil Suit No. 61 of 1948.

By order of the Governor of Bombay,

Issued usp 13/3

sent for sign AS

original

R.M.Mehta.
Assistant Secretary to Government.

To
The Revenue Department,
The Home Department,
The Commissioner, Southern Division,
The Collector of Belgaum,
The Government Pleader, High Court, Bombay.

KGM.
8.3.

116

Subject after issue

File in S Belgium

Ref

So Belgium-/45

(New file)

17/3

45 129

K.230

	Rs.As.Ps	
Copying and Comparing charges.	1-2-0 (Fls.3)	Typed by : V.D.Shah.
Paper charges.	0-0-3	Compared by :
	-----	Read by :
Total Rs.	1-2-3	

Rupee one, annas two and pies three only.

Superintendent,
Decree Department.
28-4-1952.

Copy applied for on 4-4-52
Copy ready on 28-4-52
Copy delivered on 22-5-52
V.P.P.
Head Post

Assistant Sharistadar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

Order passed by the High Court in the case of :

The State of Bombay by its representative of the Collector of Belgaum.(Original Defendant) ... ...Petitioner; (Appellant).

Versus

Govind Gopal Deshpande.....(Original Plaintiff).....Opponent. (Respondent)

Being Civil Application No.1682 of 1950 for Stay in First Appeal No.220 of 1950.

The Government Pleader for the Applicant-Appellant.
Mr. V.N.Lokur, Advocate for the Opponent-Respondent.

Order passed by the Registrar.

Rule absolute regarding immovable property, Discharged regarding rest.

Costs costs in appeal.

13-2-1951.

Sd.S.B.Palekar.
Registrar.

HIGH COURT APPELLATE SIDE BOMBAY CERTIFIED COPY

Bill of Costs in the High Court.

By the Applicant.	Rs.As.Ps
Stamps for Application.	5- 0- 0
Stamps for Vakalatnama. (In appeal)	0- 0- 0
Bhatta for process.	6- 4- 0
Advocate's Fee (One fourth)	62- 8- 0
Stamps for Affidavit.	1- 4- 0
Total Rs.	75- 0- 0

By the Opponent.	Rs.As.Ps
Stamps for Vakalatnama. (In appeal)	0- 0- 0
Advocate's Fee (One fourth)	62- 8- 0
Total Rs.	62- 8- 0

(Seal)

Sd.S.H.Belavadi.
Deputy Registrar.

The 13th day of February 1951.

True Copy.

For Deputy Registrar.

The 28th day of April 1952.

Vide D.G.P. Belgaum's letter No. 54 dt 21-1-50

5/50

~~Decree.~~ 47

In the Court of the Civil Judge, Belgaum.

ex.

Regular Civil Suit No. 61 of 1948.

Messrs. P.A.& A.G. Kulakarni Pleaders.

1. Govid Gopal Deshapande, Brahmin, Age, 35 Occupation Agriculturist. residing at Murgod, Taluka Gavadatti. } Plaintiff.

against.

B.V.Jakati.Govt. Pleader.

1. The Province of Bombay by its representative the Collector of Belgaum. ... .. Deft.

Suit Filed on:- 26-7-1948.

" Registered on :- 27-7-1948.

Claimed Rs:- 2000-0-0 for Court fees. and

" 8000-0-0 for Jurisdiction.

Plff sues.-

Bill of Costs.

	Plff. Rs. As. Ps.	Deft. Rs. As. Ps.
1. Stamps for Plaint.	162- 8 - 0	0 - 0 - 0
2. Stamp for Vakalatnama	0-10 - 0	0 -10 - 0
3. Stamps for applications	11- 2 - 0	8 - 2 - 0
4. Pleader's fees.	500- 0 - 0	250 - 0 - 0
5.Copying Fees.	0- 14 - 3	19 -11 - 0
6. For Process.	32- 8 - 0	0 - 0 -0
7. Witness Khatta.	0 -8 -0	0 - 0- 8
Total	707-10-3	278 - 7 - 0
Rejected Costs on.		
1. Stamps on applications	nil.	8 - 2 - 0
2. Copying fees.	nil.	19 -11-0
Total Balance Rs.	707 - 10- 3	250 - 10 - 0

This day. the 16th November 1949 given under my signature and seal of the court.

sd.
Clerk.

sd. N.V.Ramsubha.
Civil Judge, Senior Dn,
16-12-1949. Belgaum.

F 5149

APPAEL No. 220 OF 1950 FROM ORIGINAL DECREE.

(With Civil Application 1253/54.)

The State of Bombay by its representative the Collector of Belgaum. (Original Defendant). ... ... Appellant;

versus

Govind Gopal Deshpande. (Original Plaintiff) ... Respondent.

Appeal against the decision of N. V. Ransubhe, Esquire, Civil Judge (Senior Division) at Belgaum in Regular Civil Suit No. 61 of 1948.

Mr. V. S. Desai for the Government Pleader for the Appellant.

Mr. V. N. Lokur, Advocate for the Respondent.

(CORAM :—Shah J.)

21st July 1954.

Oral Judgment.—One Gopal Venkatesh Kulkarni was the Honorary Secretary of an agricultural co-operative credit society at Murgod. He was charged with having abetted the commission of criminal breach of trust as a public servant. On the 9th of February 1921 a warrant was issued for the arrest of Gopal. The warrant was returned with the endorsement that Gopal was absconding. On the 15th of February 1921 a proclamation was issued under section 87 of the Criminal Procedure Code that Gopal was absconding and requiring him to appear on or before the 23rd of March 1921. The proclamation was duly published as required by section 87 of the Criminal Procedure Code on the 21st of February 1921. Gopal did not appear on the date fixed before the Criminal Court which had issued the proclamation. It appears that in the meanwhile the properties belonging to Gopal were ordered to be attached under section 88 of the Criminal Procedure Code and on the 31st of May 1921 the attachment was effected. Four days before that date Gopal was arrested at the Miraj Railway Station and he was placed before the Sub-Divisional Magistrate, S. D. Belgaum. He was tried before the Court of Session at Belgaum but the proceedings failed on the ground that the arrest of Gopal was improper. He was thereafter again tried and ultimately convicted. His appeal to the High Court also failed.

On the 21st of January 1924 Gopal applied to the Collector of Belgaum to raise the attachment on his property. The Collector forwarded that application for inquiry to the Sub-Divisional Magistrate, S. D., Belgaum. Notice was issued by the Sub-Divisional Magistrate to Gopal requiring him to show that he had not absconded. Gopal replied to that notice. The Sub-Divisional Magistrate rejected the application on the 29th of August 1924. Another application with a similar request was addressed by Gopal on the 12th of January 1925 to the Sub-Divisional Magistrate, but the same was rejected on the 22nd of March 1925. An application in revision was filed by Gopal to this Court against the orders passed by the Collector and the Sub-Divisional Magistrate, but the same was rejected on the 9th of June 1925. It appears that thereafter notice was issued to Gopal requiring him to show cause why his property should not be sold, and on the 12th of February 1926 the Sub-Divisional Magistrate passed an order under

section 88 (7) of the Criminal Procedure Code declaring that the property which had been attached was at the disposal of Government. Against that order an application was submitted by Gopal to the District Magistrate, Belgaum. The District Magistrate dismissed the application on the 25th of June 1927. Against that order a memorial was presented by Gopal to the Government of Bombay. That memorial was also rejected on the 22nd of November 1927.

Gopal then filed Suit No. 116 of 1929 in the Court of the First Class Subordinate Judge at Belgaum against the Secretary of State for India in Council represented by the Collector of Belgaum, for a decree for possession of the lands which had been attached under the order of proclamation and for recovery of mesne profits. It was contended by the plaint in that suit that the Sub-Divisional Magistrate, S. D. Belgaum, who issued the proclamation on the 15th of February 1921 had no jurisdiction to issue the proclamation, that it was not issued in due and proper form and that the publication thereof contravened the mandatory provisions laid down in the Criminal Procedure Code. It was stated in the plaint that the Sub-Divisional Magistrate who passed the order on the 12th of February 1926 did not consider 'the grave objections' which had been raised by Gopal and that Gopal was asked to move the Government at whose disposal the property was then lying and that thereupon Gopal moved the Collector and the District Magistrate of Belgaum and ultimately moved the Government by a memorial.

The suit was heard by the First class Subordinate Judge, Belgaum, and was dismissed on the 23rd of September 1931. The learned Judge who heard the suit held that Gopal failed to prove that the proclamation and order of attachment were *ultra vires* and void. He also held that the order of the Sub-Divisional Magistrate, S. D., Belgaum, declaring the property to be at the disposal of Government was not *ultra vires* and the suit filed by Gopal was not maintainable because of the order declaring the property to be at the disposal of Government.

Gopal took no steps thereafter to have the property restored to him. On the 18th of January 1941 Gopal adopted one Govind as a son. On the 28th of January 1943 Gopal died and his adopted son Govind filed Suit No. 61 of 1948 in the Court of the Civil Judge (Senior Division), Belgaum, against the State of Bombay for a declaration that he was the owner of the properties in suit and which had been attached under the order of the Sub-Divisional Magistrate passed against Gopal and for possession of those properties and for a decree for Rs. 1,400 for past mesne profits and for costs of the suit and for future mesne profits.

The suit was resisted by the State of Bombay. It was contended *inter alia* that the entire interest of Gopal including his Watan rights in the suit property were forfeited under section 88 (7) of the Criminal Procedure Code and that the plaintiff on the death of Gopal was not entitled to claim the properties in suit.

It appears that the State at the trial was unable to produce the original record of the Sub-Divisional Magistrate and the Collector relating to the various applications made by Gopal and the orders passed thereon because the record was destroyed. After the evidence in the case was closed the State applied for leave to produce a certified copy of the judgment in Suit No. 116 of 1929 filed by Gopal. The learned Judge declined to allow that document to be produced and proceeded to dispose of the suit. He took the view that what was attached was only the life interest of Gopal during his lifetime and therefore on the death of Gopal the plaintiff became entitled to all the properties and as owner he was entitled to claim the property from the State together with mesne profits and costs of the suit. It is against that decree that this appeal has been filed.

Fc.'35/

In this appeal an application, being Civil Application No. 1253 of 1953 was filed on behalf of the State for leave to lead additional evidence which was not taken on record by the learned trial Judge and to produce a certified copy of the plaint in Suit No. 116 of 1929 which had since been traced. For reasons which I set out in my judgment dated the 7th of July 1954 I allowed the documents to be produced and admitted them in evidence. Opportunity was given to the respondent to lead evidence in rebuttal. Mr. Lokur on behalf of the respondent has stated before me that his client does not desire to lead any oral evidence in rebuttal of the documentary evidence which was allowed to be produced at the instance of the appellant, but he desires to produce certified copies of a judgment of the District Judge, Belgaum, in Civil Appeal No. 172 of 1932 and of a judgment of the First Class Subordinate Judge, Belgaum, in Suit No. 101 of 1930. Both the documents are allowed to be admitted in evidence.

The properties in dispute are described in paragraphs 1A, 1B, 1C and 1D of the plaint. Properties 1A and 1B are Watan properties governed by the provisions of the Bombay Hereditary Offices Act. Properties 1C and 1D are non-Watan properties. It was contended in the Court below—and that contention found favour with the learned trial Judge—that on the death of Gopal the entire interest in all the four properties vested in the plaintiff as the adopted son of Gopal and he was entitled to file a suit and that no distinction was permissible between properties which were Watan properties and non-Watan properties. The learned Judge took the view that the Government did not forfeit the properties which were attached by the order of the Sub-Divisional Magistrate pursuant to a proclamation issued against Gopal but simply held them in their custody. According to the learned Judge in the Court below that view was supported by certain orders which were passed by the Commissioner and the revenue authorities. He pointed out that the lands, after they were attached and the applications made by Gopal were rejected, were shown by the Collector in the revenue records as waste lands, but the Commissioner set aside the order of the Collector and directed him to show those lands in his—collector's—name as Inam property. The learned Judge set out the order of the Commissioner (Exhibit 43) as follows : " The Watan property belonging to the accused does not lose its Watan character by its attachment. The sale of it will therefore have to be made within the Watan family." The learned Judge then observed :

> " As per this order, the village officers mutated the entry with this endorsement that as Gopal absconded, his life interest was only attached and that therefore it should be shown under Inam head in the name of Collector *vide* Exhibit 13. Exhibit 43 and 13, if read together, make it crystal clear that the Government simply attached the life interest of deceased Gopal and did not forfeit or confiscate it under section 88(7) of Criminal Procedure Code. "

He further observed that ' there were no materials proceeding from Government to show that these properties were ever confiscated or forfeited ' by them. The burden, according to the learned Judge, lay heavily upon Government to establish confiscation, but in his view the Government had failed to do so.

Now, in order to decide the dispute which arises in this appeal it is necessary to appreciate the effect of an order passed for attachment of property under section 88(*1*) and the effect of section 88(7) of the Criminal Procedure Code on such property. It is also necessary to ascertain whether orders passed in respect of Watan property in the hands of the holder were binding on the succeeding Watandar. Section 87 enables a Court which has reason to believe that any person

special rules of inheritance as provided under the Bombay Hereditary Offices Act. The property in his hand may also be liable to restrictive provisions if imposed under the terms of a commutation Settlement. But subject to these restrictions a Watandar is the full owner of the property and he fully represents the estate and a succeeding Watandar derives his title as heir of the preceding Watandar and not independently of him. As pointed out by Mr. Phadnis in his Watan Act, fifth edition, 1936, at page 46, it is well established that a Watan is an estate and the Watandar for the time being fully represents the Watan and a succeeding Watandar derives his title as heir of the preceding Watandar. It is also pointed out at page 47 that the ingredients (mentioned by Mr. Phadnis) clearly show that the interest of the Watandar in his Watan is the same as in the case of other property except in so far as it is specially restricted ; and the restrictions are : (1) under section 5 of the Bombay Hereditary Offices Act, (2) under section 2 of Act V of 1886, which prescribes a different mode of succession, and (3) if the terms of commutation Settlement, effected either under section 15 or validated by it,—place any restriction then the estate or the tenure is subject to such conditions ; and that subject to restrictions under these three heads there appear to be no other restrictions. The view expressed by Mr. Phadnis appears to have been taken by this Court in several decisions. I need only refer to two of them which illustrate that view. They are *Tuka* v. *Ganu* (1930) 32 Bom. L.R. 1938 and *Swamirao* v. *Bhimabai* (1932) 34 Bom. L.R. 697. Both were cases in which it was claimed that by adverse possession of Watan property for 12 years under a sale deed passed by a Watandar the right of a succeeding Watandar was extinguished, and that contention was upheld. In the case of *Tuka* v. *Ganu* it was observed on an exhaustive discussion of the authorities that a succeeding Watandar derives his title as heir of the preceding Watandar and that the title is capable of being barred and extinguished by adverse possession. The principle in the case of *Tuka* v. *Ganu* was extended to a case in which the adverse possession continued for a period of 12 years, part of which was during the lifetime of one Watandar and the balance during the lifetime of the succeeding Watandar. It must therefore be held that the plaintiff in this case being a succeeding Watandar is subject to the same infirmities to which Gopal was subject in respect of the Watan estate. If therefore Gopal was incompetent to obtain possession of the property, Gopal's adopted son could not avoid the infirmities to which he was subject *qua* the Watan property. At the time when the property was taken possession of under the order of attachment, the plaintiff was not a coparcener. Even when the proclamation was published and the period provided for Gopal's appearance expired the plaintiff had no interest in the property. Assuming that the properties were coparcenery properties in the hands of Govind as the sole surviving coparcener, when by reason of the various orders passed the property became impressed with the incidents provided in section 88 (7) of the Criminal Procedure Code the plaintiff by his subsequent adoption in the family to which Gopal belonged could not acquire a right higher than the right which Gopal had. The status of the plaintiff as a coparcener of the family therefore does not assist Gopal.

The third argument appears to be a mere corollary to the first argument. The interest of Gopal as a Watandar not being a mere life interest but an estate of ownership subject to certain restrictions, did not come to an end and the plaintiff did not acquire a fresh interest in the property on the death of Gopal, but he merely inherited the property if he at all could. For reasons which I have already mentioned the interest of Gopal in the property could not be regarded as a mere life interest in the property with a vested remainder in the plaintiff or anybody else.

The learned Judge in the Court below took the view that the present case was governed by the principle of a decision of this Court reported in *Secretary of State* v. *Ahalyabai* (1937), 40 Bom. L.R., 422, which it may be observed was a judgment delivered in an appeal from a decree passed in a suit relating to the same estate with regard to which the present suit arises and the effect of the same order of attachment fell to be decided. It appears that Gopal had a brother Dhondo who died in the year 1918 leaving him surviving his widow Bhagirthibai and his unmarried daughter Ahalyabai and Dhondo was entitled to an undivided interest in the properties which were the subject-matter of the litigation which ultimately culminated in the case referred to before. On the death of Dhondo that interest devolved upon Gopal as the sole surviving coparcener. Thereafter Bhagirathibai and Ahalyabai claimed maintenance and provision for the marriage expenses of Ahalyabai from the property in the hands of the Government of Bombay; and it was held by this Court:—

> "Where the property of an absconder has been attached and is at the disposal of Government, under section 88 of the Criminal Procedure Code of 1898, a person having a claim to such property can enforce it by an independent action in a Civil Court so long as the property is not sold and remains in the hands of Government, even if such person has not applied to a Magistrate as provided in the section.
>
> Under Hindu Law, where a person has succeeded by survivorship to the share of his deceased coparcener, he takes it subject to the burden of maintaining the widow and unmarried daughters of the deceased coparcener. The burden attaches to the property."

That case in my judgment has no application to the facts of the present case. That was a case in which strangers to the interest which was attached and which was at the disposal of Government claimed to enforce a right against the property subject to which the property was at the disposal of Government. It was held by Mr. Justice Divatia, who decided the case, that the property in the hands of Gopal was subject to the burden of maintaining Bhagirthibai and Ahalyabai and to make provision for the marriage of Ahalyabai; and when it was at the disposal of Government under section 88 (7) the obligation to which Gopal was subject also surviving against the Government and in favour of the two ladies and that obligation could be enforced either by taking proceedings under sub-section (*6A*) of section 88 or by an independent suit. As I have already observed, the plaintiff in this case cannot claim the property independently of Gopal. He has no rights independently of Gopal. Whatever rights he can have in the property are rights which he has acquired from Gopal and he could not make an application under sub-section (*6A*) of section 88 of the Criminal Procedure Code, nor could he file a suit for enforcing those rights independently of Gopal. The learned Judge in the Court below in my judgment was in error in holding that the case of *Secretary of State* v. *Ahalyabai* had any application to the question to be decided in the present appeal. In the circumstances it must be held that the plaintiff had no cause of action for maintaining the suit either in respect of the Watan properties or the non-Watan properties.

Mr. Lokur urged that the order passed by the Sub-Divisional Magistrate on the 12th of February 1926 that the property attached was at the disposal of Government until orders are received from the higher authorities meant that the title to the property continued to vest in Gopal and devolved upon the plaintiff. It is difficult to accept that contention. Once the property was by reason of section 88 of the Criminal Procedure Code at the disposal of Government, it could be

disposed of by Government and it may be necessary to obtain orders of the higher authorities for disposing of the same. But that does not involve acceptance of the proposition submitted by Mr. Lokur that the Sub-Divisional Magistrate continued to recognise the title of Gopal and of any other person claiming under him. The order only provided that the property was to remain at the disposal of Government and it was to be disposed of in the manner ordered by the higher authorities.

In the view that I take, the appeal will be allowed and the suit will be dismissed. Having regard to the fact that material evidence was not produced in the trial Court at an early stage by the State, I think it is just and proper that the parties do bear their own costs throughout.

No orders as to costs in Civil Application No. 1253 of 1954.

By order of the Court,

(Signed) V. R. GADKARI,

Deputy Registrar.

True Copy
21-2-55
For Deputy Registrar

The 21st day of February 1955.

Copy applied for on 27-7-54
Copy ready on 21-2-55
Copy delivered on 16-3-55
Sent by V.P.P. Post
16/3
Assistant Superintendent

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

1755.

	Rs.As.Ps.Fls. 8
Copying & comparing charges.	3-0-0
Paper charges.	0-0-6
Total	3-0-6

Typed by G.S.Desai.
11 -9-1954
Examined by S.O.Parnekar
Read by S.M.Satyhare

Rupees three and pies six only.

A.P.Yajnik
Superintendent D.D.
15 -9-1954

Copy applied for on 27-7-54
Copy ready on 15-9-54
Copy delivered on 16-3-55
Sent V.P.P. on
Post
Assistant Superintendent. 16/3

In the High Court of Judicature at Bombay.

Wednesday the 21st day of July 1954.

Appeal No. 220 of 1950 from Original Decree.

(District Belgaum).

The State of Bombay by its representative the Collector of Belgaum ... ... Appellant.
(Original defendant).

versus

Govind Gopal Deshpande ... ... Respondent.
(Original Plaintiff).

Claim Rs. 2086-2-9 for court fees.
Rs. 8000/ for jurisdiction.

The plaintiff sued to obtain a declaration that he was the owner of the suit property and to recover possession of the same together with past mesne profits and costs of the suit from the defendant.

The Original Suit No. 61 of 1948 was decided by the Civil Judge (Senior Division) of Belgaum who decreed the suit for possession and directed plaintiff to recover Rs. 1350 as past mesne profits and costs of the suit from the defendant who should bear his own.

An appeal has been admitted in the High Court from the decision of the lower court. Notice was ordered to issue by the Honourable Mr. Justice Shah on the 7th day of July 1950.

The grounds of objection to the decision appealed against are :-

1. That the decision of the lower court is contrary to law and against the weight of evidence in the case.

2. That the lower court erred in holding that the plaintiff was the adopted son of Gopal Deshpande.

3- That it ought to have been held that the adoption was not proved.

4. That the lower court erred in not appreciating that as Gopal was suffering from plague, he was not in a sound state of mind and hence the adoption should have been held bad.

5. That the evidence as to adoption should not have been relied upon.

6. That the lower court erred in not appreciating that the Government had confiscated the properties of Gopal under section 88 of the Criminal Procedure Code.

7. That the lower court has failed to appreciate that the effect of the whole action of the Government was to confiscate Gopal's property.

8. That exhibit 43 and exhibit 13 and other documentary evidence in the case is misread and its legal effect is misunderstood.

9. That the lower court erred in law in holding that the watan property must revert to the plaintiff.

10. That the lower court ought to have held that Gopal's interest in the properties was extinguished.

11. That case law is misread and its true legal effect is misunderstood.

12. That the legal effect of section 88 of the Criminal Procedure Code is misunderstood by the lower court.

13. That section 88 is misread and its legal effect is misunderstood.

14. That the entry in the record of rights is misread.

15. That exhibits 5 to 22 is misread and its legal effect is misunderstood.

16. That it was an error in law to have awarded mesne profits.

17. That the rate of mesne profits awarded is also too high.

18. That the suit of the plaintiff ~~xx~~ should have been

dismissed with costs.

19. That the decision is even otherwise erroneous.

20. That the appellant craves leave to add, to alter, vary or cancel the grounds after the record is received.

Coram :- Shah, J.

For the reasons stated in the accompanying judgment, the Court allows the appeal sets aside the decree passed by the lower court and dismisses the plaintiff's suit.

The parties to bear their own costs throughout.

21-7-1954. Sd. V.R. Gadkari.
Deputy Registrar.

Bill of Costs in the High Court.

By the appellant.	Rs.As.Ps.
Stamps for Memorandum of appeal.	162-8-0
Stamps for copies of decrees and judgments.	1-14-0
Stamps for Vakalatnama (G.P. appears)	0-0-0
Bhatta for process.	6-4-0
Sectioner's fee.	17-1-0
Advocate's fee.	250-0-0
Surcharge.	62-8-0
Printing charges.	11-0-0
Copying charges for preparing paper books.	7-0-0
Stamp for affidavit.	0-0-0
Translation fee.	27-8-0
Copying fee under Rule 125 of the High Court Appellate Side Rules, 1950.	5-8-0
Total	551-3-0

By the respondent.	Rs.As.Ps.
Stamps for Vakalatnama	2-8-0
~~Stamps for Memorandum of appeal.~~	~~162-8-0~~
Advocate's fee.	250-0-0
Surcharge.	62-8-0
Stamp for affidavit.	0-5-0
Total	315-5-0

(Seal) Sd. V.R. Gadkari.
Deputy Registrar.
The 21st day of July 1954.

True Copy

for Deputy Registrar.

The 15th day of September 1954.

Suits:

Belgaum.

For restoration of possession of plaint lands and properties and other reliefs.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 9981/E
Bombay Castle, 12th May 1955.

Read Government Resolution, Legal Department No.3483, dated the 13th March 1950.

Letter from the Government Pleader, High Court, Bombay No.4149 dated the 5-5-55 stating that the First Appeal No.220 of 1950 in the suit noted in the margin was decided by the High Court, Bombay on the 21st July 1954, when the following order was passed:-

In the Court of the Civil Judge (Senior Division) Belgaum.	
Civil Suit No.61 of 1948.	
Govind Gopal Deshpande ... Plaintiff.	
vs.	
Province of Bombay. ... Defendant.	

"For the reasons stated in the accompanying judgment, the Court allows the appeal sets aside the decree passed by the lower court and dismisses the plaintiff's suit.

The parties to bear their own costs throughout."

Letter from the Government Pleader, High Court, Bombay No.4149, dated the 5-5-1955, forwarding certified copies of the judgment and decree.

RESOLUTION:- The result of the appeal is recorded.

By order and in the name of the Governor of Bombay,

12/5

(D.P. Shikhare,)
Deputy Secretary to Government.

To

The Home Department,
The Revenue Department,
The Collector of Belgaum,
The Government Pleader, High Court, Bombay,
The District Government Pleader, Belgaum.

KUP.11/5.